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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,031	12/11/2003	Linda Bootland	10044	8423

26607 7590 02/24/2006

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EXAMINER

BUI, PHUONG T

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/733,031		BOOTLAND ET AL.	
	Examiner		Art Unit	
	Phuong T. Bui		1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-9 is/are rejected.
- 7) ☒ Claim(s) 5 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4 IDS</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Restriction election

1. The Office acknowledges the receipt of Applicant's restriction election filed January 5, 2006. Applicant elects Group I, claims 1-10 and SEQ ID NO:5, without traverse. Claims 1-23 are pending. Claims 11-23 and SEQ ID Nos: 6, 7 and 8 are nonelected. Claims 1-10 and SEQ ID NO:5 are examined in the instant application. This restriction is made FINAL. Applicant is reminded to cancel non-elected inventions from the claims as appropriate (claims 5, 10 and 11-23).

Information Disclosure Statement

2. Initialed and dated copies of Applicant's IDS form 1449 filed Oct. 1, 2004, Aug 19, 2004, May 6, 2004 and Mar 19, 2004 are attached to the instant Office action.

Claim Rejections - 35 USC § 101 Utility

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 2, 6 and 7 are rejected under 35 U.S.C. 101 because these claims are drawn to nonstatutory subject matter. The seed of claim 2 does not necessarily contain the recombinant nucleotide sequence because of segregation of genes during seed production, and thus reads on a product of nature. Similarly, the composition of claims 6 and 7 do not require that the plant material or seed be transgenic, and since a plant or

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seed can cause an immunogenic response in fish (allergenic or poisonous plant material) when taken in by the fish, it reads on a product of nature.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Koprowski et al. (US Pat. No. 5935570 (A)). Koprowski teaches a plant and seed expressing a fish antigen including from the fish pathogen birnaviridae (col. 7, ln. 24) which can be administered with an adjuvant (excipient) (col. 8, ln. 2). Accordingly, Koprowski anticipated the claimed invention.

Remarks


8. Claims 5 and 10 are objected to as being dependent on rejected claims but would be allowable if rewritten in independent form and without the non-elected inventions.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong T. Bui whose telephone number is 571-272-0793.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Phuong T. Bui
Primary Examiner
Art Unit 1638

2/20/06

02/20/06